IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.207 OF 2006

The Board of Trustees of the Port of Mumbai. ... Petitioner

vs.

M/s.Afcons Infrastructure Ltd. .... Respondent.

Mr.Umesh Shetty i/b. Mulla & Mulla & C.B. & C., for Petitioner.

Mr.Virag Tulzapurkar with Ms.Cooper i/b. Desai & Diwanji, for Respondent.

CORAM: D.K.DESHMUKH,J.

DATED: 20th September,2006

P.C.:-

1. This is a petition filed under Section 27 of the Arbitration and Conciliation Act,1996. Sub-Section (1) of Section 27 of the Act reads as under:-

> "27. Court assistance in taking evidence – (1) The arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence."

It is obvious that an application under this provision can be made either by the Arbitral Tribunal or by a party with the approval of the Arbitral tribunal. This application has not been made by the Arbitral Tribunal but has been made by the party to the arbitration proceedings. I neither find any averment made in the petition that the Arbitral Tribunal has granted approval for the party to make such an application to the Court nor do I find any order placed on record made by the Arbitral Tribunal approving the making of such application to the Court. The application is therefore not maintainable. Hence, it is rejected. The petitioner to pay cost of this petition to the respondent as incurred by the respondent.